

**MINUTES OF MEETING OF
HEALTH STRATEGIES COUNCIL**
Department of Community Health, Division of Health Planning
2 Peachtree Street, 29th Floor Board Room, Atlanta 30303
Friday, November 18, 2005

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11:00 am – 1:00 pm

Daniel W. Rahn, M.D., Chair, Presiding

MEMBERS PRESENT

Charles T. "Chuck" Adams
William "Buck" Baker, Jr., MD
Harve R. Bauguess
Elizabeth P. Brock
Tary Brown
W. Clay Campbell
Susan Chambers, RNC
Nelson B. Conger, DMD
Janet P. Deal
John F. Freihaut, DDS
Vernon E. "Trey" Googe, III
Charlene M. Hanson, Ed.D., FNP (via conference call)
C. Thomas Hopkins, Jr., MD
Donna W. Hyland
Gary G. Oetgen
James Peak
Kelly Penton
Jessie L. Petrea
Louise Radloff
Sheila M. Ridley
Toby D. Sidman
Mark H. Wilson

GUESTS PRESENT

Judy Adams, Ga. Assoc. Home Health Agencies
Taffey Bisbee, Mitretek Health Care
Andrew Block, Nelson Mullins, Riley & Scarborough
Kathy Browning, Georgia Society of General Surgery
Christi Carmicheal, Emory Healthcare
Webb Cochran, Tenet Healthcare Corp
Cynthia George, Phoebe Putney Memorial Hospital
Lori Jenkins, Phoebe Putney Memorial Hospital
Bill Lewis, Lewis Consulting LLC

MEMBERS ABSENT

Michael E. Greene, MD
Katie Foster

STAFF PRESENT

Neal Childers, JD
Charemon Grant, JD
Richard Greene, JD
Matthew Jarrard, MPA
Robert Rozier, JD
Rhathelia Stroud, JD
Stephanie Taylor

Brian Looby, Medical Association of Georgia
Courtney Merritt, Georgia Dental Association
Erin Moriarty, Atlanta Business Chronicle
Kevin Rowley, St. Francis Hospital
Temple Sellers, Georgia Hospital Association
Linda Simmons, The Surgery Center, LLC
Holly Snow, Piedmont Healthcare
Leah Watkins, Powell Goldstein

WELCOME AND INTRODUCTION OF NEW MEMBERS

The Health Strategies Council (Council) meeting commenced at 11:10 am. Dr. Rahn noted that several members of the Council had been replaced by the Governor's office due to expiration of terms. He welcomed everyone and invited Council members and Department staff to introduce themselves. He acknowledged Charlene Hanson, who joined the Council meeting via conference call.

EXECUTION OF OATH OF PUBLIC OFFICERS

Dr. Rahn read the *Oath of Public Office* document and asked Council members to meet with staff from the Governor's office who attended today's meeting, in order to execute their signatures on the state's official roster.

OVERVIEW OF ROLE OF HEALTH STRATEGIES COUNCIL

Dr. Rahn reviewed the Health Planning and CON Statute (O.C.G.A § 31-6-1-70) as follows:

The policy of this state and the purposes of this chapter are to ensure that adequate health care services and facilities are developed in an orderly and economical manner and are made available to all citizens and that only those health care services found to be in the public interest shall be provided in this state. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that a system of mandatory review of new institutional health services be provided. Health care services and facilities should be provided in a manner that avoids unnecessary duplication of services, that is cost effective, and that is compatible with the health care needs of the various areas and populations of the state.

He also reviewed the objective of the Council noting that:

The objective of the HSC is to assist in and provide guidance for policy development and resource allocation for an efficient and high quality health care delivery system, easily accessible to people in the State of Georgia, at a reasonable cost.

Additionally, he said that the Council is charged with the following:

- *Adopting the state health plan and submitting it to the [Board of Community Health] for approval;*
- *Reviewing, commenting on, and making recommendations to the Department on the proposed Rules for the administration of this chapter, except Emergency Rules, prior to their adoption by the Department;*
- *Conducting an ongoing evaluation of Georgia's existing health care resources for accessibility, including but not limited to financial, geographic, cultural, and administrative accessibility, quality, comprehensiveness, and cost;*
- *Studying long-term comprehensive approaches to providing health insurance to the entire population; and*
- *Performing such other functions as may be specified for the council by the Department or the board.*

OVERVIEW OF MISSION AND GOALS OF DEPARTMENT OF COMMUNITY HEALTH (DCH)

Dr. Rahn called on Neal Childers, General Counsel, DCH to provide an overview of the mission and goals of the Department. Mr. Childers said that the Department is involved in planning, purchasing, and regulating health care in the state and insures over 2 million Georgians. He said that the Board of Community Health, a nine-person body, serves as the policy-making authority for the DCH.

Following Mr. Childers's summation of DCH goals, Dr. Rahn brought members attention to correspondence contained in today's meeting materials from the Georgia Society of General Surgeons dated November 15th. He said that ambulatory surgical services is an area that the Council studied during CY2003. He said, at that time, a technical advisory committee (TAC) which was chaired by William G. "Buck" Baker, Jr., MD was convened. The TAC met and developed a set of draft Rules that were presented to the Health Strategies Council at their November 2003 meeting. He said because there were several concerns that had been presented to the Council by the Department and others, the Council and the Department requested a legal opinion from the Office of the Attorney General (OAG). A summary of the OAG's opinion was presented at the Council's August meeting 2005 and is also included in today's member packet.

Given the change in Council membership, Dr. Rahn asked Mr. Childers to provide a summation of the current status of the ambulatory surgery Rules development process. Including an overview of legal issues surrounding ambulatory surgery.

Mr. Childers said that there are two sets of Rules that govern ambulatory surgical services in the state, namely Letters-of-NonReviewability (LNR) and the Certificate of Need (CON) process.

- **LNR:** This application process, exempts a provider from CON if ambulatory surgical services are performed in the offices of an individual private physician or a single group practice of private physicians if it is performed in a facility that is owned, operated, and utilized by physicians who also are of a single specialty and the capital expenditure associated with the construction, development, or establishment of the service does not exceed the statutory capital threshold (currently \$1.515 million). He said that neither the Statute nor Department Regulations define "single specialty" however the term "multi-specialty ambulatory surgery service" is defined in the Department's Ambulatory Surgery Services Rules.
- **CON:** The CON process is triggered if the provision of a new single specialty ambulatory surgical service exceeds the capital threshold; if an existing ambulatory surgery facility seeks to expand and the expansion triggers the capital threshold; if an existing ambulatory surgical service seeks to replace its

existing facility or if the applicant is seeking to provide a multi-specialty ambulatory surgery center.

Mr. Childers said that in 1987, the Department created Rules to exempt Limited Purpose, Physician-owned Ambulatory Surgery Centers from meeting the numerical need and adverse impact standards for CON review. He said that it was in the 1987 regulation that the Department defined limited purpose to mean that general surgery practice could not qualify for a limited purpose practice. Since 1987, single-specialty has excluded general surgery. He said that the Court of Appeals has held that when the General Assembly came later and modified the former provisions of the Limited Purpose CON to allow exemption from CON for single-specialty physician-owned office practices, that the General Assembly did that with knowledge of the preexisting Rule and must have intended to preserve that definition or else they would have enacted language in the 1991 legislation that would have modified it. He said that the Court of Appeals has held that no action by the General Assembly to change the definition, in effect, has ratified it. He said that the Supreme Court upheld the decision of the Court of Appeals. He affirmed that the Department does not have legal authority to change the definition; only the General Assembly can do so.

Council members engaged in significant discussion about the LNR Rules. They inquired from the Chair and the Department Counsel whether they could make recommendations for changes to the DCH Board. Mr. Childers said that the DCH Board is limited by the court decisions on this issue and that it would be more appropriate for this issue to be addressed by the Commission on the Efficacy of the CON Program (Commission). Dr. Hopkins said he would like the minutes of the Council's meeting to reflect that he believes that General Surgery is a single-specialty.

Dr. Rahn noted that Dr. Baker chaired the Ambulatory Surgical Services Technical Advisory Committee (TAC). He called on Dr. Baker to provide an overview to the Council about the TAC's decision to exclude General Surgery from single-specialty designation. Dr. Baker told Council members that this discussion was the most exhaustive part of the committee meetings. He said that the TAC engaged in lengthy discussions about the scope of practice of general surgeons. He said that the TAC also examined a wide range of materials, in addition to the position statement of the American Society of General Surgeons (ASGS), adopted December 1996, ...which read in part....

"General Surgery is a comprehensive discipline that encompasses knowledge and experience common to all surgical specialties. The General Surgeon has primary responsibility and expertise in the areas of the abdomen and its entire contents, breast, head and neck, vascular system, endocrine system, oncology, trauma and critical care. The General Surgeon has the experience and training to manage common problems in plastic, thoracic, pediatric, gynecologic, urologic, neurologic and orthopedic surgery. The General Surgeon has the training, competence and qualifications to perform a wide range of diagnostic and therapeutic procedures, including endoscopy.

He said that the decision by the TAC to exclude General Surgery from the list of single-specialties was not unanimous but that several TAC members were concerned that given the wide scope of practice of General Surgery, that this discipline should be considered a multi-specialty service.

He said that the TAC further acknowledged that Georgia has a large number of ambulatory surgery centers, a majority of which are exempt from CON. He said that TAC members were concerned about increasing the number of facilities that could provide such a wide array of services in the absence of a mechanism to ensure that quality standards and indigent and charity care commitments would be met. Dr. Baker and Tary Brown, members of the TAC further noted that general surgery was not the only area that submitted requests for inclusion as single-specialties.

Some members said that the TAC should not have considered the scope of practice of the General Surgeon but should have focused on whether General Surgery has a specialty Board designation.

Dr. Rahn asked members whether they wanted to vote on this issue. Some Council members expressed a desire to vote on the issue of whether General Surgery should be considered a single-specialty service while other members felt that it would be premature for the Council to act at this time, given recent membership changes and the lack of Council familiarity with the full spectrum of issues.

Following additional Council discussion, Mr. Oetgen made a motion, seconded by Dr. Conger to do the following:

1. The Department should act on the recommendations of the Office of Attorney General;
2. The Department should provide background materials, including TAC minutes, draft State Health Plan, OAG's legal opinion and other pertinent materials, for Council member review ;
3. The Council would further discuss this issue and would vote at the next meeting.

Members voting in support of this motion (16); members voting in opposition of this motion (5); members abstaining (2).

Following this motion, some members felt that because of the importance of this issue that Council members should have the benefit of outside opinions and input from Associations and other sources prior to making any concrete recommendations.

Council members inquired about the next steps in the planning process prior to the next quarterly Council meeting in February. Dr. Rahn said that the Department would distribute the recommended ambulatory surgery information after which time a conference

call would be initiated (sometime in December) and some action could be taken at the February meeting. He said that Council action could include a recommendation to create a new TAC to implement the recommendations from the OAG and to reach consensus regarding other outstanding areas in the draft Ambulatory Surgical Services Rules. The TAC's recommendations would be brought back to the Council.

GENERAL ADMINISTRATIVE ISSUES

Dr. Rahn called on Department staff to review the following:

- **Background and Orientation Materials-** An array of information contained in folders, including an overview of the Department, Health Planning Statute, Health Planning Bylaws, List of current HSC members, List of State Health Plans, FY2004 & FY2003 Annual Reports of HSC, Administrative Forms and List of States With & Without CON Regulation. Department staff provided an overview of this material but encouraged members to review it more thoroughly and to contact the Department for clarification or further information.
- **Health Strategies Council Membership List** – a copy of the Council membership, along with the area of representation was provided to members. Department staff asked members to review this list to be sure that it is accurate since it would be posted on the Council's webpage. Also included in members' materials was a copy of the press release, issued by the Governor's office which announced the appointment of new Council members.

APPROVAL OF MINUTES OF AUGUST 19, 2005 MEETING

A motion to accept the minutes of the August 19, 2005 meeting was made by Clay Campbell, seconded by Dr. William Baker. This motion was unanimously accepted by all members.

PRESENTATION AND APPROVAL OF 2005 ANNUAL REPORT

Dr. Rahn told members that the Council issues an annual Report which outlines and summarizes its work throughout the year. He said that this report is provided to members of the General Assembly and is posted on the Department's website. He acknowledged that the report is the work of the previous Council and asked members to consider whether they would like to review it and vote to accept it at the February 2006 meeting. Members recommended that the current Council members be listed in the report. Several members recommended that the annual report be approved, as submitted. A motion to approve the 2005 Annual Report was made by Dr. Baker, seconded by Jim Peak. This motion was unanimously approved by the Council.

UPDATE ON THE COMMISSION ON THE EFFICACY OF THE CON PROGRAM

Dr. Rahn told Council members that the Commission on the Efficacy of the CON Program (Commission) was established to study and collect information and data relating to the effectiveness of the Certificate of Need program in Georgia. He said that members were appointed by the Governor, The President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Commission started meeting in June and has held four meetings, to date. He said that the Commission has heard from several stakeholders and the Department has presented lots of information to help in the decision-making process. He further indicated that the commission will issue a final report to the Governor and the General Assembly on or before June 30, 2007. He invited members to attend the Commission meetings, which are open to the public. He said that the minutes of the meetings can also be downloaded from the Department's website.

PROPOSED MEETING DATES - CY 2006

The proposed meeting dates for CY2006 are as follows:

- Friday, **February 17, 2006**; 2 Peachtree Street, 29th Floor Board Room
- Friday, **May 19, 2006**; location, TBD
- Friday, **August 18, 2006**; location, TBD
- Friday, **November 17, 2006**; location, TBD

All meetings are scheduled from 11:00 am - 1:00 pm.

OTHER BUSINESS & ADJOURNMENT

There being no further business, the meeting adjourned at 1:15 pm.

Minutes taken on behalf of Chair, by Stephanie Taylor

Respectfully Submitted,

Daniel W. Rahn, MD